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9 July 2022

Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814

*Subject:* Additional Authority re: Joint Test Claim 21-TC-02

Dear Commissioners:

Staff have posted an Updated Proposed Decision, but it continues to miss the issue that this test claim is governed by Propositions 218 and 26—and now also fails to cite a new case on Propositions 218 and 26 that strongly supports Claimants, *City of San Buenaventura v. United Water Conservation District* (May 26, 2022) 79 Cal.App.5th 110.

*City of San Buenaventura* followed from the remand of another Propositions 218 and 26 case by the California Supreme Court—which the Updated Proposed Decision also does not cite. (*City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191.) The Supreme Court directed the Court of Appeal to consider whether a local agency met its burden to show that a “groundwater extraction charge” was not actually a tax under Propositions 218 and 26 because it bore “a fair or reasonable relationship to the payor’s burdens on, or the benefits received from, the governmental activity”. (79 Cal.App.5th at 114, citing Cal. Const., art. XIII C § 1(e).) Applying the independent judgment test, the Court of Appeal held that the charge failed that constitutional test and thus was a tax. (*Id.* at 120-121.)

The Updated Proposed Decision does not identify any way for Claimants to pay for the Mandate that would not require raising taxes as defined by Propositions 218 and 26. The Updated Proposed Decision mentions Proposition 218 only once, in an unconvincing paragraph on page 35, and ignores Proposition 26 altogether. The Updated Proposed Decision would dismiss the Test Claim by essentially just ignoring the real issue.

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The project required by the Mandate at issue could *only* be funded by taxes as defined by Propositions 218 and 26, because, as the Test Claim explained (Section 5 at 14), the Mandate is *not* at all intended to benefit the Claimants' ratepayers. Because the Mandate at issue here is not intended benefit Claimants' ratepayers, but to provide benefits to areas entirely outside their boundaries, it could only be funded through fees that Propositions 218 and 26 would deem taxes. Article XIII B § 6 would apply to such taxes and requires reimbursement for the costs. The Test Claim should proceed to adjudication on the merits without further delay.

Sincerely,

BRISCOE IVESTER & BAZEL LLP

*/s/ Peter Prows*

Peter Prows  
Claimants' Representative